**Richard A. Turner Co., Inc. *and* International Brotherhood of Electrical Workers, AFL–CIO, Local 300 *and* International Brotherhood of Electrical Workers, AFL–CIO, Local 103.** Cases 1–CA–31297 and 1–CA–31350

June 14, 1994

## DECISION AND ORDER

BY MEMBERS STEPHENS, DEVANEY, AND COHEN

Upon charges filed by International Brotherhood of Electrical Workers, AFL–CIO, Locals 300 and 103 (the Unions), on January 20 and February 3, 1994, respectively, the General Counsel of the National Labor Relations Board issued separate complaints on March 17 and 18, 1994, against Richard A. Turner Co., Inc. (the Respondent), alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act.[1] Although properly served copies of the charges and complaints, the Respondent failed to file answers.

On May 13, 1994, the General Counsel filed a Motion for Summary Judgment with the Board. On May 17, 1994, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

### Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaints affirmatively note that unless an answer is filed within 14 days of service, all the allegations in the complaints will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated April 20, 1994, notified the Respondent that unless an answer were received by close of business on April 27, 1994, a Motion for Summary Judgment would be filed. To date no answers have been received.

In the absence of good cause being shown for the failure to file timely answers, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

[1] By order dated April 7, 1994, the General Counsel consolidated the two cases.

### FINDINGS OF FACT

#### I. JURISDICTION

At all material times, the Respondent, a corporation with an office and place of business in Springfield, Massachusetts, has been engaged as an electrical contractor in the construction industry doing industrial and commercial construction. During the calendar year ending December 31, 1993, the Respondent, in conducting its business operations performed services valued in excess of $50,000 for enterprises within the Commonwealth of Massachusetts which are themselves directly engaged in interstate commerce, and received at its Springfield facility goods and materials valued in excess of $50,000 directly from points located outside the Commonwealth of Massachusetts. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Unions are labor organizations within the meaning of Section 2(5) of the Act.

#### II. ALLEGED UNFAIR LABOR PRACTICES

The following employees (the unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All employees of the Respondent engaged in the installation of all electrical systems and component parts thereof, but excluding guards and supervisors as defined in the Act.

At all material times, Electrical Contractors of Vermont (Association Vermont) and Electrical Contractors Association of Greater Boston, Inc. (Association Greater Boston) have been organizations composed of various employers engaged in the building and construction industry, one purpose of which is to represent their employer-members in negotiating and administering collective-bargaining agreements with various labor organizations, including Local 300 and Local 103, respectively.

About August 19, 1991, the Respondent entered into a Letter of Assent-A whereby it agreed to be bound to the collective-bargaining agreement between Local 300 and Association Vermont effective for the period June 1, 1990, through May 31, 1992, and agreed to be bound to such future agreements unless timely notice was given.

The Respondent, an employer engaged in the building and construction industry, granted recognition to Local 300 as the exclusive collective-bargaining representative of the unit without regard to whether the majority status of Local 300 had ever been established under the provisions of Section 9(a) of the Act. Such recognition has been embodied in successive collective-bargaining agreements, the most recent of which is

effective for the period June 1, 1993, through May 31, 1994 (the 1993–1994 agreement).

For the period from August 19, 1991, through May 31, 1994, Local 300 has been the limited exclusive collective-bargaining representative of the unit.

Since about July 25, 1993, the Respondent has failed and refused to pay for its employees in the unit the payments which have become due to the following funds pursuant to the 1993-1994 agreement:

(i) Local 300 Health and Welfare Fund
(ii) Local 300 Pension Fund
(iii) Annuity Fund
(iv) Joint Apprentice Training Committee
(v) National Electrical Benefit Fund

Although the subjects set forth above relate to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purposes of collective bargaining, the Respondent engaged in the conduct without the Unions' consent.

About March 6, 1991, the Respondent entered into a Letter of Assent-A whereby it agreed to be bound to the collective-bargaining agreement between Local 103 and Association Greater Boston effective for the period September 1, 1990, through August 31, 1993, and agreed to be bound to such future agreements unless timely notice was given.

The Respondent granted recognition to Local 103 as the exclusive collective-bargaining representative of the unit without regard to whether the majority status of Local 103 had ever been established under the provisions of Section 9(a) of the Act. Such recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective for the period September 1, 1993, through August 31, 1996 (the 1993–1996 agreement).

For the period from March 6, 1991, through August 31, 1996, Local 103 has been the limited exclusive collective-bargaining representative of the unit.

Since about February 15, 1994, the Respondent has failed and refused to pay for its employees in the unit the payments which have become due to the following funds pursuant to the 1993–1996 agreement:

(i) Health and Welfare Fund
(ii) Pension Fund
(iii) Deferred Income Fund
(iv) Apprenticeship and Training Fund
(v) National Electrical Benefit Fund
(vi) Health and Welfare Supplementary Unemployment Fund
(vii) Educational and Cultural Fund

Although the subjects set forth above relate to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purposes of collective bargaining, the Respondent engaged in the conduct without the Unions' consent.

## CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been failing and refusing to bargain collectively with the limited exclusive collective-bargaining representatives of its employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5), Section 8(d), and Section 2(6) and (7) of the Act.

## REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) by failing, since July 25, 1993, to make payments to the various funds pursuant to its 1993–1994 agreement with Local 300, and by failing, since February 15, 1994, to make similar payments pursuant to its 1993–1996 agreement with Local 103, we shall order the Respondent to honor the terms of the agreements and to make whole its unit employees by making all such delinquent payments, including any additional amounts due the funds in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979). In addition, the Respondent shall reimburse unit employees for any expenses ensuing from its failure to make the required payments, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

## ORDER

The National Labor Relations Board orders that the Respondent, Richard A. Turner Co., Inc., Springfield, Massachusetts, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively with International Brotherhood of Electrical Workers, AFL–CIO, Local 300 and International Brotherhood of Electrical Workers, AFL–CIO, Local 103, as the limited exclusive collective-bargaining representatives of the employees in the following unit by failing to make payments which have become due to the various funds on behalf of the employees, pursuant to its 1993–1994 agreement with Local 300 and its 1993–1996 agreement with Local 103:

> All employees of the Respondent engaged in the installation of all electrical systems and component parts thereof, but excluding guards and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Honor the terms of the 1993–1994 agreement with Local 300 and the 1993–1996 agreement with Local 103 by making all required benefit fund payments, and make whole the unit employees for its failure to do so by making all delinquent payments to the various funds, and by reimbursing the employees for their expenses ensuing from its failure to make required payments, with interest, as set forth in the remedy section of this decision.

(b) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(c) Post at its facility in Springfield, Massachusetts, copies of the attached notice marked "Appendix."[2] Copies of the notice, on forms provided by the Regional Director for Region 1, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material.

[2] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. June 14, 1994

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| James M. Stephens, | Member |
| Dennis M. Devaney, | Member |
| Charles I. Cohen, | Member |

(SEAL) NATIONAL LABOR RELATIONS BOARD

## APPENDIX

### NOTICE TO EMPLOYEES
### POSTED BY ORDER OF THE
### NATIONAL LABOR RELATIONS BOARD
### An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to bargain collectively with International Brotherhood of Electrical Workers, AFL–CIO, Local 300 and International Brotherhood of Electrical Workers, AFL–CIO, Local 103, as the limited exclusive collective-bargaining representatives of the employees in the following unit by failing to make payments which have become due to the various funds on behalf of the employees, pursuant to our 1993–1994 agreement with Local 300 and our 1993–1996 agreement with Local 103:

> All employees employed by us engaged in the installation of all electrical systems and component parts thereof, but excluding guards and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL honor the terms of the 1993–1994 agreement with Local 300 and the 1993–1996 agreement with Local 103 by making all required benefit fund payments, and WE WILL make the unit employees whole for our failure to do so since July 25, 1993, and Febuary 25, 1994, respectively, by making all delinquent payments to the various funds, and by reimbursing the employees for their expenses ensuing from our failure to make required payments, with interest.

RICHARD A. TURNER CO., INC.